IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Appeal No. 123 of 2006.
(Old No. 2121 of 1981).

1. Kundan Singh.
2. Raghubir Singh
   Both sons of Mehtab Singh, resident of village Molta Patwari circle (Helang) Langal, Tehsil Joshimath, district Chamoli.

…. Appellants.

Versus

State.

…. Respondent.

Sri B.P.S. Mer, Amicus Curiae, for the appellants.
Sri R.M. Birkhani, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

1. This appeal, preferred under section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 24.08.1981 passed by learned Sessions Judge, Chamoli in Sessions Trial No.7 of 1981 whereby appellants were convicted under section 427 and 436 of Indian Penal Code, 1860 (for brievity hereuinafter referred as IPC) and each one of them was sentenced to rigorous imprisonment for a period of one year (under section 427 IPC) and rigorous imprisonment for a period of two years and also to pay fine of Rs. 4000/- (under section 436 IPC). In default of payment of fine the defaulter convict was directed to undergo rigorous imprisonment for a period of six months. It is also directed in the impugned judgment that out of the fine Rs. 3000/- shall be paid to the complainant Jhagar Singh. Both the sentences are directed to run concurrently.

2. Heard Sri B.P.S. Mer, Amicus Curiae, for the appellants and learned A.G.A. for the State.

3. Prosecution story, in brief, is that PW 1 Jhagar Singh was sanctioned a water flour mill in January, 1974 by the

Forest Department in Dasoli, Compartment No.3 within forest range Joshimath. In pursuance of said sanction he constructed a water flour mill in August, 1974 and was running the same. However, it appears that appellants Kundan Singh and Raghubir Singh had objection to the construction of said water flour mill as their claim was that the land over which the mill was constructed belongs to them. In 1974 itself some 'MAARPEET' took place between the appellants and complainant (Jhagar Singh). A criminal case appears to have been initiated in respect to said incident and appellants were convicted on 09.12.1974. A revision filed by them against said order was also dismissed. Subsequently in the year 1977 the appellants got lodged a complaint against Jhagar Singh through forest department official alleging that the mill is being run unauthorisedly as the period of sanction has expired. However, Jhagar Singh (PW 1) appears to have been acquitted in said case.

4. On 22.01.1980 at about 5.30 p.m. accused/appellants Kundan Singh and Raghubir Singh went to Uniyali Tok where the water flour mill of the complainant is situate and demolished it and burnt it to ashes. On coming to know of said fact PW 1 Jhagar Singh went to lodge a First Information Report to Patwari but the Patwari asked him to get the investigation ordered by the Magistrate, as such Jhagar Singh filed criminal complainant before the Chief Judicial Magistrate, Chamoli, alleging that the appellants committed offences punishable under section 427 and 436 IPC and he has caused loss to the tune of Rs. 4000/-. On direction from Chief Judicial Magistrate to investigate, after investigation a charge sheet was submitted against both the accused/appellants by Patwari Darwani Lal (PW 3) who submitted the same alongwith the evidence collected by

him. (In Uttaranchal Hills in certain areas police powe4rs are given to revenue officials). It appears that the Magistrate, on receiving the charge sheet, committed the case to the court of Sessions for trial after giving necessary copies to the accused persons. Learned Sessions Judge, after hearing the prosecution and the defence framed charge of offences punishable under section 427 and 436 IPC against both the accused Kundan Singh and Raghubir Singh. They pleaded not guilty and claimed to be tried. On this, prosecution got examined PW 1 Jhagar Singh, PW 2 Kundan Singh, PW 3 Darwani Lal and PW 4 Aalam Singh. The oral and documentary evidence was put to the accused persons under section 313 Cr.P.C., in reply to which they alleged that the same is false and they have been falsely implicated. The trial court, after hearing the parties, found both the appellants guilty of offences punishable under section 427 and 436 IPC and after hearing them on sentence, each one was sentenced to the punishment as mentioned earlier.

5. Learned Amicus Curiae, on behalf of the appellants argued that the trial court has erred in law by believing statement of PW 1 Jhagar Singh with whom the appellants had already enmity as the statement of said witness was not corroborated by PW 2 Kundan Singh. On examination of the statement of PW 2 Kundan Singh this Court found that though PW 2 Kundan Singh has stated that he heard (not seen) that the accused/appellants have committed mischief by setting fire on water flour mill of Jhagar Singh but this witness has corroborated the prosecution story to the extent that the water flour mill of Jhagar Singh was destroyed by fire after demolition, on the day of incident.

6. Sri B.P.S. Mer, learned counsel for the appellants also argued that PW 4 Aalam Singh who has narrated the

prosecution story as an eye witness, is a relative of the complainant and, as such, testimony of interested witness should not be believed. Had there been many witnesses and independent witness were not produced by the prosecution this Court would have accepted the contention advanced on behalf of the appellants. But a water flour mill (commonly known as GHARAT) is generally constructed in a lonely place in a 'gorge' where natural water channel is available to run the water flour mill. PW 4 Aalam Singh has stated that on the day of incident at about 5.30 p.m., after grazing his goats he was taking them through Uniyali Gadhera when he saw that the accused persons Kundan Singh and Raghubir Singh demolishing the water flour mill and set it on fire. The witness has further stated that he objected to the appellants not to do so but they curtly replied that the land belongs to them.

7. The evidence of PW 4 Aalam Singh, in the facts and circumstances of the case, can not be disbelieved also for the reason that no-one-else had any interest except the appellants in demolishing the water flour mill. In a village water flour mill is a useful plant for grinding of wheat for other including villagers of nearby villages. It is only the appellants who were objecting right from 1974 as to the construction of water flour mill alleging that the same is on their land.

8. The prosecution story also gets corroboration from the documents of earlier litigation between the parties which are Ext.A8 and Ext.A9.

9. For the reasons as discussed above, this Court finds no error of law or that of fact, committed by the trial court in convicting the accused/appellants and sentencing them to rigorous imprisonment for one year (under section 427 IPC)

and two years and to pay fine of Rs. 4000/- (under section 436 IPC, in default of payment of which, the defaulter convict is directed to undergo rigorous imprisonment for further six months.

10. The appeal is, therefore, dismissed. The conviction and sentence passed by the trial court is maintained. The appellants are on bail. Their bail is cancelled. The trial court shall take them into custody to make them to serve out the sentence.

(Prafulla C. Pant, J.)

16.10.2006.
Negi.